IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 39 OF 2006

SHRI GOPAL DATTU PAL ....Appellant

Versus

THE ADMINISTRATOR OF COMMUNIDADE OF BARDEZ AND 8 ORS., ...Respondents

Mr. Mahesh S. Sonak for the appellant.

Mr. M. Rane for respondent 1.
Mr. Harishchandra L. Naik for respondent 2.
Mr. Amrut Kansar for respondents 3 and 6.
Mr. Sandesh Padiyar for respondent 7.
Ms. K. Chodankar, AGA for respondents 8 and 9.

Coram:- SMT. RANJANA DESAI, J.

Date:- 22nd June, 2006

P.C. :-

1. Heard the learned counsel for the parties. Though respondents 4 and 5 are served, none appears for them.

2. Rule. By consent of the parties, taken up for final hearing forthwith.

3. The original plaintiff has challenged in this appeal, the order dated 15/4/2006 passed by the Ad-hoc Additional District Judge, (Fast Track Court), Mapusa, whereby he has dismissed the application of the plaintiff for temporary injunction. The three principles underlying grant or refusal of temporary injunction are well settled viz. (a) whether the petitioner has made out a prima facie case; (b) whether balance of convenience is in his favour and (c) whether the petitioenr will suffer irreparable loss and/or injury if temporary injunction is refused. In Ajay Mittal Industrial Premises Co-operative Society v. Raj Publicity, 2004(4) Mh.L.J. 305, this court has reiterated the same principles.

4. Having perused the impugned order, I am of the view that the trial court has completely lost sight of the above principles. There is no indication in the impugned order that these well established principles were considered by the trial court. In fact, contrary to the well established principles, the trial court has taken into consideration the alleged loss or injury suffered by defendant 2. This approach, in my opinion, is totally incorrect. In the circumstances of the case, therefore, without going into the merits of the case, the appropriate course will be to set aside the impugned order, remand the matter to the trial court with direction to the trial judge to re-hear all the parties and decide the application in accordance with law and in the light of the aforementioned principles. Hence, the following order :

O R D E R

5. The impugned order dated 15/4/2006 is quashed and set aside. The matter is remanded to the trial court with direction to the trial judge to hear and decide the matter afresh in accordance with law, in the light of the abovementioned principles, within a period of four weeks from the date of receipt of this order by the trial court. I am informed that a status-quo order is running till today. The same shall continue to operate till such time as the trial court disposes of the injunction application.

6. Appeal from order is disposed of in the aforestated terms.

7. In view of the above, Civil Application No.142 of 2006 does not survive and is disposed of accordingly.

SMT. RANJANA DESAI, J.

AJN